

[Federal Register: March 3, 2004 (Volume 69, Number 42)]

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Certification Process for the Temporary Employment of
Aliens in Agriculture and Logging in the United States: 2004 Adverse
Effect Wage Rates, Allowable Charges for Agricultural and Logging
Workers' Meals, and Maximum Travel Subsistence Reimbursement

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Adverse Effect Wage Rates (AEWR's), allowable charges
for meals, and maximum travel subsistence reimbursement for 2004.

SUMMARY: The Employment and Training Administration (ETA) announces
2004 adverse effect wage rates for employers seeking nonimmigrant alien
(H-2A) workers for temporary or seasonal agricultural labor or services
and logging; the allowable charges employers seeking nonimmigrant alien
(H-2A) workers for temporary or seasonal agricultural labor or services
and logging work may levy upon their workers when they provide three
meals per day; and the maximum travel subsistence reimbursement which a
worker with receipts may claim in 2004.

AEWR's are the minimum wage rates the Department of Labor has
determined must be offered and paid to U.S. and prevent the employment
of these aliens from adversely affecting wages of similarly employed U.S. workers.

The Department of Labor also announces the new rates which covered
agricultural and logging employers may charge their workers for three
daily meals.

Under specified conditions, workers are entitled to reimbursement
for travel subsistence expenses. The minimum reimbursement is the
charge for three daily meals as discussed above. The Department of
Labor (DOL) also announces the current maximum reimbursement for
workers with receipts.

EFFECTIVE DATE: March 3, 2004.

FOR FURTHER INFORMATION CONTACT: William Carlson, Chief, Division of Foreign Labor Certification, U.S. Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202-693-3010 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The U.S. Citizenship and Immigration Services may not approve an employer's petition for admission of temporary alien agricultural H-2A workers to perform agricultural labor or services of a temporary or seasonal nature in the United States unless the petitioner has received from the DOL an H-2A labor certification. Approved labor certifications attest (1) there are not sufficient U.S. workers who are able, willing, and qualified and who will be available at the time and place needed to perform the labor or services involved in the petition; and (2) the employment of the alien in such labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184(c), and 1188.

DOL's regulations for the H-2A program require that covered employers offer and pay their U.S. and H-2A workers no less than the applicable hourly Adverse Effect Wage Rate. 20 CFR 655.102(b)(9); see also 20 CFR 655.107. Reference should be made to the preamble of the July 5, 1989, Final Rule (54 FR 28037), which explains in great depth the purpose and history of AEWR's, DOL's discretion in setting AEWR's, and the AEWR computation methodology at 20 CFR 655.107(a). See also 52 FR 20496, 20502-20505 (June 1, 1987).

A. Adverse Effect Wage Rates for 2004

Adverse effect wage rates are the minimum wage rates which DOL has determined must be offered and paid to U.S. and alien workers by

employers of nonimmigrant H-2A agricultural workers. DOL emphasizes, however, that such employers must pay the highest of the AEWR, the applicable prevailing wage, or the statutory minimum wage, as specified in the regulations. 20 CFR 655.102(b)(9). Except as otherwise provided in 20 CFR part 655, subpart B, the region-wide AEWR for all agricultural employment (except those occupations deemed inappropriate under the special circumstances provisions of 20 CFR 655.93) for which temporary alien agricultural labor H-2A certification is being sought, is equal to the annual weighted average hourly wage rate for field and livestock workers (combined) for the region as published annually by the U.S. Department of Agriculture (USDA). USDA does not provide data on Alaska. 20 CFR 655.107(a).

The regulation at 20 CFR 655.107(a) requires the Assistant Secretary, Employment and Training Administration, to publish USDA field and livestock worker (combined) wage data as AEWR's in a Federal Register notice. Accordingly, the 2004 AEWR's for work performed on or after the effective date of this notice, are set forth in the table below:

Table--2004 Adverse Effect Wage Rates

State	2004 AEWR
Alabama.....	\$7.88
Arizona.....	7.54
Arkansas.....	7.38
California.....	8.50
Colorado.....	8.36
Connecticut.....	9.01
Delaware.....	8.52
Florida.....	8.18
Georgia.....	7.88

Hawaii.....	9.60
Idaho.....	7.69
Illinois.....	9.00
Indiana.....	9.00
Iowa.....	9.28
Kansas.....	8.83
Kentucky.....	7.63
Louisiana.....	7.38
Maine.....	9.01
Maryland.....	8.52
Massachusetts.....	9.01
Michigan.....	9.11
Minnesota.....	9.11
Mississippi.....	7.38
Missouri.....	9.28
Montana.....	7.69
Nebraska.....	8.83
Nevada.....	8.36
New Hampshire.....	9.01
New Jersey.....	8.52
New Mexico.....	7.54
New York.....	9.01
North Carolina.....	8.06
North Dakota.....	8.83
Ohio.....	9.00
Oklahoma.....	7.73
Oregon.....	8.73
Pennsylvania.....	8.52
Rhode Island.....	9.01
South Carolina.....	7.88
South Dakota.....	8.83

Tennessee.....	7.63
Texas.....	7.73
Utah.....	8.36
Vermont.....	9.01
Virginia.....	8.06
Washington.....	8.73
West Virginia.....	7.63
Wisconsin.....	9.11
Wyoming.....	7.69

B. Allowable Meal Charges

Among the minimum benefits and working conditions which DOL requires employers to offer their alien and U.S. workers in their applications for temporary logging and H-2A agricultural labor certification, is the provision of three meals per day or free and convenient cooking and kitchen facilities. 20 CFR 655.102(b)(4) and 655.202(b)(4). Where the employer provides meals, the job offer must state the charge, if any, to the worker for meals.

DOL has published at 20 CFR 655.102(b)(4) and 655.111(a) the methodology for determining the maximum amounts covered H-2A agricultural employers may charge their U.S. and foreign workers for meals. The same methodology is applied at 20 CFR 655.202(b)(4) and 655.211(a) to covered H-2 logging employers. These rules provide for annual adjustments of the previous year's allowable charges based upon Consumer Price Index (CPI) data.

Each year the maximum charges allowed by 20 CFR 655.102(b)(4) and 655.202(b)(4) are changed by the same percentage as the twelve-month percent change in the CPI for all Urban Consumers for Food (CPI-U for Food) between December of the year just past and December of the prior year. Those regulations and 20 CFR 655.111(a) and 655.211(a) provide that the appropriate Regional Administrator (RA), Employment and

Training Administration, may permit an employer to charge workers no more than a higher maximum amount for providing them with three meals a day, if justified and sufficiently documented. Each year, the higher maximum amounts permitted by 20 CFR 655.111(a) and 655.211(a) are changed by the same percentage as the twelve-month percent change in the CPI-U for Food between December of the year just past and December of the prior year. The regulations require the DOL to make the annual adjustments and to publish a notice in the Federal Register each calendar year, announcing annual adjustments in allowable charges that may be made by covered agricultural and logging employers for providing three meals daily to their U.S. and alien workers. The 2003 rates were published in a Notice on February 26, 2003 at 68 FR 8929.

DOL has determined the percentage change between December of 2002 and December of 2003 for the CPI-U for Food was 2.2 percent.

Accordingly, the maximum allowable charges under 20 CFR 655.102(b)(4), 655.202(b)(4), 655.111, and 655.211 were adjusted using this percentage change, and the new permissible charges for 2004 are as follows: (1) For 20 CFR 655.102(b)(4) and 655.202(b)(4), the charge, if any, shall be no more than \$8.78 per day, unless the RA has approved a higher charge pursuant to 20 CFR 655.111 or 655.211(b); for 20 CFR 655.111 and 655.211, the RA may permit an employer to charge workers up to \$10.88 per day for providing them with three meals per day, if the employer justifies the charge and submits to the RA the documentation required to support the higher charge.

C. Maximum Travel Subsistence Expense

The regulations at 20 CFR 655.102(b)(5) establish that the minimum daily subsistence expense related to travel expenses, for which a worker is entitled to reimbursement, is the employer's daily charge for three meals or, if the employer makes no charge, the amount permitted under 20 CFR 655.104(b)(4). The regulation is silent about the maximum

amount to which a qualifying worker is entitled.

The Department, in Field Memorandum 42-94, established that the maximum is the meals component of the standard CONUS (continental United States) per diem rate established by the General Services Administration (GSA) and published at 41 CFR Ch. 301. The CONUS meal component is now \$30.00 per day.

Workers who qualify for travel reimbursement are entitled to reimbursement up to the CONUS meal rate for related subsistence when they provide receipts. In determining the appropriate amount of subsistence reimbursement, the employer may use the GSA system under which a traveler qualifies for meal expense reimbursement per quarter of a day. Thus, a worker whose travel occurred during two quarters of a day is entitled, with receipts, to a maximum reimbursement of \$15.00. If a worker has no receipts, the employer is not obligated to reimburse above the minimum stated at 20 CFR 655.102(b)(4) as specified above.

Signed at Washington, DC, this 17th day of February, 2004.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

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